IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29/10/2003

CORAM

THE HONOURABLE MR. JUSTICE D. MURUGESAN

WRIT PETITION No.13577 of 1996

Smt. R.Dhanalakshmi .. Petitioner

-Vs-

1. Government of Tamil Nadu rep. By its
Chief Secretary
Fort St. George, Madras.9.

2. Secretary to Government of Tamil Nadu
Public (Law and Order) Department
Fort St.George, Madras.9.

3. The Secretary
Government of Tamil Nadu
Home Department, Fort St. George,
Madras.9.

4. Director General of Police
Law and Order, Tamil Nadu
Madras.2.

5. District Collector
Tiruchirapalli, Tiruchi.1. .. Respondents

Petition filed under Article 226 of The Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to pay compensation of Rs.9 lakhs (Rupees Nine lakhs only) to the petitioner and her two minor children and her old age mother-in-law for the death of her husband due to police torture at Karur Police Station.

!For petitioner .... Mr.V.Sitharanjandoss

^For respondents .... Mr.S.V.Duraisolaimalai
Government Advocate

:ORDER

The petitioner is the unfortunate wife of one Rajmohan, who was admittedly died while in police custody. It is not in dispute that the said

Rajmohan, the husband of the petitioner, was taken under police custody at 5.00 a.m. on 23.3.1995 by Thiru R. Eswaran,the then SubInspector of Police,Karur Police Station. While the deceased Rajmohan was taken in a van towards Karur, he was tortured and beaten to death by the said Sub-Inspector of Police. Since the death was in police custody and the allegation that the deceased was tortured and due to said torture he died, the Sub Collector, Karur conducted an enquiry under Section 145 of Police Standing Order. The Sub Collector in his report found that the deceased Rajmohan died only on account of the torture at the hands of the Sub Inspector of Police, karur Police Station. The post mortem certificate issued by the Medical Officer, Government Hospital, karur also revealed that the victim Rajmohan died of Neurogenic shock due to the pain caused by injuries on chest at 10 to 1 4 hours prior to autopsy. The autopsy was conducted at 5.00 p.m. On 23.3.1995.

2. Considering the custodial death, placing reliance on G.O. Ms. No. 1069 Public (Law and Order-A) Department dated 14.11.1995, the Government sanctioned a sum of Rs.1 lakh to the petitioner under Chief Minister's Public Relief Fund and as an ex-gratia payment and the said amount was paid to the petitioner on 17.1.1996. Even in the counter affidavit,the fact that the deceased Rajmohan died due to torture at the hands of the said Sub-Inspector of Police is not denied. In fact, in the additional counter affidavit filed by the Additional Secretary to Government, Public (Law and Order-A) Department, Secretariat, Chennai.9, it is stated that the said Sub Inspector of Police was also proceeded with an enquiry under Police Standing Order and was found guilty. The Government also ordered criminal prosecution and departmental action against him. However, the criminal case filed against the said Sub Inspector of Police ended in acquittal. The Government has also filed an appeal against the order of acquittal before this Court and the same is pending. The Departmental action was also initiated and charges were framed against the Sub Inspector of Police and he was awarded punishment.

3. Questioning the said punishment, the delinquent Officer filed O. A. No.7261/1999 before the Tamil Nadu Administrative Tribunal, Chennai. The said order of punishment was quashed by the Tribunal in its order dated 1.07.2002. The Writ Petition filed by the Government, questioning the order of the Tribunal was also dismissed by this Court on 14.7.2003.

4. From the above it is clear that as far as the Government is concerned, the deceased Rajmohan died only due to torture and inhuman treatment at the hands of the Mr. Eswaran,the then Sub Inspector of Police, Karur Police Station. On the above facts,it must be first concluded that the deceased Rajmohan died while he was in police custody and that too, due to harassment at the hands of the Sub Inspector of Police,Karur Police Station.

5. In the matter of custodial death, the Supreme Court in more than one case has upheld the power of this Court under Article 226 of the Constitution of India to award just and reasonable compensation. Infact, even when the custody is taken, the procedure to be followed by the Investigating Agency are enumerated by the Apex Court in the judgment reported in SHRI D.K.

BASU VS STATE OF WEST BENGAL (1996(4) Crimes 233(SC) .

6. The Apex Court in the judgment reported in RUDUK SHAH VS STATE OF BIHAR (A.I.R. 1983 SC 1086) held that the power of the Court to award compensation is always available in the event, the death in custody is proved to be due to either harassment or torture or negligence on the part of the police officers. I myself in W.P. No.12274/1995 by order dated 25.7.2003 while considering the custodial death, by placing reliance on the above two judgments of the Apex Court, have ordered payment of Rs.2 lakhs as compensation to the wife of the deceased.

7. Coming to the question of quantum, it must be noted that the deceased was 29 years age on the date when he died in police custody. This fact has not been disputed by the respondents in the counter affidavit. Further, the fact that the deceased left at the time of his death, the petitioner, wife of the deceased aged about 27 years two minor sons by name Gowthaman aged 7 years and Saravanan aged 5 years apart from his mother Anjalaiammal aged 55 years, has not been disputed by the respondent in the Counter affidavit. Infact, in para 4 of the counter affidavit the respondents have stated as follows:

"The Writ Petitioner submitted that she is the legal heir of the deceased Rajmohan as the deceased's wife. Records of enquiry revealed that the age of the deceased is 32/95.."

8. Insofar as the claim of legal heirship, there is no dispute. Insofar as the income of the deceased at the time of his death is concerned, even much prior to the filing of the Writ Petition, lawyer's notice dated 3.8.1996 was issued to all the respondents wherein the petitioner has categorically stated as follows:

"8. Age of the victim at the time of cause of action is 29 years. His date of birth is 8.5.1966. He was a fleet owner operating a lorry bearing Registration No.TNY 8681 (Ashok Leyland). He was earning Rs.6,000/- per month through his lorry (less all expenses including Insurance, fuel, maintenance etc) The dependents of the victim have lost their only earning member. The loss to them is permanent. According to the existing law, the compensation for the loss and consortium towards love and affection together will be estimated at Rs.9,00,000/- (Rupees Nine lakhs only) The dependents have lost their affectionate husband, father and son respectively. The victim was died only on account of the police torture under police custody. It was a case of custodial death and hence the Government liable for Government lawlessness. The State

Government is vicariously liable for the
lawlessness act of its servant"

9. Even the averments claimed in the lawyer's notice have not been denied by the respondents by way of filing any reply. Even in the affidavit filed in support of the Writ Petition in para 10, the petitioner has reiterated the same and claimed that the deceased was the owner of a lorry and was earning a sum of Rs.6,000/- per month excluding the expenses towards insurance, fuel and salary to the driver and cleaner. As against the said specific claim, all that the respondents have stated in para 4 of the counter affidavit is as follows:

The Writ Petition submitted that she is the legal
heir of the deceased Rajmohan as the deceased's wife.
Records of enquiry reveal that the age of the
deceased is 32/95. The contention of the petitioner
is that the deceased is a lorry owner and he was
earning Rs.6,000/- per month, that the loss of
the victim is a permanent one and claims of
compensation for Rs.9 lakhs. In this connection,
it is relevant to state that the Government have
already taken into consideration, the death of
Rajmohan and the status of his legal heirs and
decided that, an ex-gratia amount of Rs.1 lakh
be paid to the petitioner"

10. An additional affidavit has also been filed by the respondents. Even in the additional counter affidavit, the claim of the petitioner as to the income of the deceased at the time of his death is not denied. The averment in para 4 of the counter affidavit which has been extracted above, is only again reiterated.

11. In the circumstances, this Court has to consider the actual income of the deceased. Of course, when the income is either questioned or disputed by the respondents, this Court would not have ventured itself to go into the disputed questions and arrive the actual quantum of income. This Court is entitled to fix a reasonable compensation on the given facts and circumstances of the case, when the specific claim of the petitioner that the deceased was earning a sum of Rs.6,00 0/- per month are not denied and infact, a reading of para 4 of the counter affidavit goes to show that the said claim is impliedly admitted by the respondents, this Court has no reason to reject the claim of the petitioner that the deceased was earning a sum of Rs.6,000/- per month on the date of his death. That apart, when the averments of the petitioner are not specifically denied in the counter affidavit, those averments must be taken as true as per the settled principles laid down by the Apex Court in C.S.ROWJEE VS STATE OF A.P.(A.I.R. 19 64 SC 962) The same view has been reiterated by the Apex Court in the judgment reported in MINTU BHAKTA VS THE STATE OF WEST BENGAL (1 973 (4) SCC 85) Infact, the Apex Court has held in para 8 of the judgment as follows:

"The only answer to such a specific plea in the

Government's counter affidavit was a bare denial of various facts and allegations stated by the petitioner in his writ petition", and an equally bare assertion that the impugned order was made bona fide and in accordance with law. Such a vague answer is neither a proper nor an adequate reply in disproof of the specific allegations made twice by the petitioner. That allegation, therefore, remains unanswered and must consequently be accepted in the absence of any cogent reply thereto"

12. In view of the above settled position of law, in the absence of any denial to the claim of Rs.6,000/- as the monthly income of the deceased,I am unable to accept the argument of Mr.S.V.Duraisolaimalai, learned Government Advocate that there is no evidence to show that the deceased Rajmohan was earning a sum of Rs.6,000/- per month at the time of his death. The claim which was unrebutted must be taken as true for the purpose of determining the just and reasonable compensation.

13. In view of the above, the next question to be considered is, as to the actual amount of compensation to which the petitioner is entitled. There is absolutely no difficulty in determining the quantum of compensation when once the monthly income of the deceased is arrived at Rs.6,000/- and the age of the deceased was 29 at the time of death. The Apex Court in the judgment reported in GREWAL M.S. AND ANOTHER VS DEEP CHAND SOOD AND OTHERS (2002(1) law Weekly 491) has broadlined the guidelines to be adopted by the Courts in determining the just and reasonable compensation. The Apex Court has approved the multiplier adopted in the Motor Vehicle cases for the purpose of determining the compensation in the case of custodial torture. Hence, the multiplier method adopted in the case of Motor Accidents is adopted for determining the just and reasonable compensation in this case.

14. As already stated, the monthly income of the deceased is fixed at Rs.6,000/- The deceased was aged 29 years at the time of his death. If we adopt multiplier of 18, then the amount comes to Rs.12,96,00 0/- 1/3 amount viz., Rs.4,32,000/- has to be deducted towards the personal expenses of the deceased. Then, the compensation comes to Rs.8,66,000/-. Rs.2,000/- can be fixed towards funeral expenses and a sum of Rs.32,000/- can be fixed towards loss of consortium and love and affection. Hence, the petitioner is entitled to the total compensation of Rs.9 lakhs.

15. Therefore, I am of the considered view that the petitioner is entitled to just and reasonable compensation of Rs.9 lakhs towards the death of the deceased Rajmohan in the police custody. After deducting a sum of Rs.1 lakh which has already been paid, the petitioner is entitled to a sum of Rs.8 lakhs. The question of interest on the said amount, cannot be ordered as the matter is pending in this Court from 1996 and the respondents/State cannot be mulcted with interest due to the delay in disposal of the Writ Petition.

16. Accordingly, the Writ Petition is allowed and there will be a direction to the respondents to pay a sum of Rs.8 lakhs to the petitioner

which shall be apportioned equally by the the wife viz., the petitioner, two minor sons and the mother of the deceased Rajmohan. The respondents are directed to pay the said sum to the petitioner within a period of one month from the date of receipt of copy of this order. No costs.

Index: Yes
Website: Yes

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To
1. Chief Secretary
Government of Tamil Nadu
Fort St. George, Madras.9.

2. Secretary to Government,
Government of Tamil Nadu
Public (Law and Order) Department
Fort St.George, Madras.9.

3. The Secretary
Government of Tamil Nadu
Home Department, Fort St. George,
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